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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,612	03/30/2004	Kiyoshi Miyazaki	52273/DBP/A400	6816
23363	7590	04/21/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			KRAWCZEWCZ MYERS, LOUANNE C	
PO BOX 7068			ART UNIT	PAPER NUMBER
PASADENA, CA 91109-7068			1661	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/814,612	MIYAZAKI, KIYOSHI	
Examiner	Art Unit		
Louanne C Krawczewicz Myers	1661		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on papers filed 3/30/08/24/ and 10/28/04.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 30 March 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/24/ and 3/30/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### Objection to the Disclosure

#### 37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

### **35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) and under 35 U.S.C. 112 first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

A. Page 1, line 3, Applicant sets forth that the instant plants' parent is "Senecio *heritieri*". It is not clear if Applicant intended "*heritieri*" or --*heritieri*--. Correction to the specification and/or clarification is necessary.

B. Page 1, line 11, Applicant is requested to set forth in the specification whether the parental cultivar(s) 'Extra Blue' has been patented in the United States, is currently the subject of a pending U.S. Plant Patent application, or unpatented. If patented, --(U.S. Plant patent No.)-- should be inserted after the cultivar name. If the subject of a pending application, such should be referred to by serial number. If unpatented, --(unpatented)-- should be inserted after the appropriate cultivar name.

C. Page 1, line 15, Applicant sets forth " 'Cinneraria' " in single quotes, which is proper for a cultivar designation. --"Cinneraria"-- would be more accurate.

D. Page 1, lines 16, 26 and 33, Applicant states "flowers". It appears --inflorescences—may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.

E. Page 1, lines 27 and 33, Applicant states "petals". It appears --ray florets-- may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.

F. Page 2, line 13, Applicant states "Plant Pat. No.". It appears that --Plant Patent Number-- would instead be more accurate.

G. Page 2, line 14, Applicant is requested to set forth in the specification whether the cultivar(s) 'Miss Yokohama' has been patented in the United States, is currently the subject of a pending U.S. Plant Patent application, or unpatented. If patented, --(U.S. Plant patent No.)-- should be inserted after the cultivar name. If the subject of a pending application, such should be referred to by serial number. If unpatented, --(unpatented)-- should be inserted after the appropriate cultivar name.

H. Page 2, lines 1- 24, Applicant should set forth in the specification how and where the instant cultivar was first asexually reproduced.

I. Page 2, lines 28-29, Applicant states that the “new variety is unlike any Senecio commercially available”. It appears that --known to the inventor-- should be inserted after “available” since not all varieties of Senecio may be available to Applicant. Correction to the specification and/or clarification is necessary.

J. Page 2, line 33, Applicant states “flowers”. It appears --inflorescences-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

K. Page 2, line 33, Applicant states “petal”. It appears --ray floret-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

L. Page 2, line 34, Applicant states “disk”. It appears --disc floret-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

M. Page 3, line 7, Applicant states “flower”. It appears

--inflorescence-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

N. Page 3, lines 9 and 25, Applicant states "disk". It appears -- disc floret-- may be the more appropriate botanical terminology to use in these instances. Correction to the specification and/or clarification is necessary.

O. Page 3, line 21, " 'Snusenebabu' " appears to be misspelled. Correction to the specification and/or clarification is necessary.

P. Page 4, line 13, Applicant states "blossoms". It appears --inflorescences-- may be more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

Q. Page 4, lines 27-36, Applicant should set forth in the specification additional information relative to the instant plant's stem/lateral branches including typical and observed length.

R. Page 4, line 29, Applicant states "139C (moderate yellow green)". When compared with the RHS dictionary of Color, 139C is in the "Green" group. Correction to the specification and/or clarification is necessary.

S. Page 4, lines 30 and 31, Applicant states "Anthocyanin coloration.- present in parts of the stem". Applicant should set forth a specific coloration with reference to the employed color chart.

T. Page 5, line 5, Applicant states in the specification that the instant plants' "Degree of Undulation – Weak". This recitation is vague as it is unclear what applicant is intending. Correction to the specification and/or clarification is necessary.

U. Page 4, line 37 and 5, lines 1-16, Applicant should set forth in the specification additional information relative to the instant plants' leaf venation including the pattern and coloration with reference to the employed color chart.

V. Page 5, lines 10 and 11, Applicant states "146A (Moderate olive green)". When compared with the RHS dictionary of Color, 146A is in the "Yellow-Green" group. Correction to the specification and/or clarification is necessary.

W. Page 5, lines 12 and 13, Applicant states "191B (pale yellow green)". When compared with the RHS dictionary of Color, 191B is in the "Greyed-Green" group. Correction to the specification and/or clarification is necessary.

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X. Page 4, line 37 and 5, lines 1-16, Applicant should set forth in the specification additional information relative to the instant plants' stipules including the typical and observed number per petiole, length, width, apex, base, margin and coloration (both surfaces) with reference to the observed color chart.

Y. Page 5, lines 8 and 9, Applicant should set forth in the specification additional information relative to the instant plant's petioles including coloration with reference to the employed color chart.

Z. Page 5, lines 17, 18, and 23, Applicant states "flower". It appears --inflorescence-- may be more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.

AA. Page 5, lines 19, 20, 21, and 37, Applicant states "flower cluster". It appears --inflorescence cluster-- may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.

BB. Page 5, line 23, Applicant sets forth the diameter of "flower" and it is unclear if this measurement is for a single inflorescence. Applicant should set forth in the specification a diameter for a single inflorescence.

CC. Page 5, line 24, Applicant sets forth the "diameter of disk". It is unclear if this measurement is for a single disc floret. Applicant should set forth in the specification a diameter for a single disc floret.

DD. Page 5, line 24, Applicant should set forth in the specification additional information with respect to the typical and observed disc floret shape, length, apex, base and margin descriptors and coloration for both surfaces with reference to the employed color chart.

EE. Page 5, line 27, Applicant states " disk flower". It appears --disc floret-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

FF. Page 5, line 34, Applicant states " disk flowers". It appears --disc florets-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

GG. Page 5, line 25, Applicant sets forth the "petal" color. However, it is uncertain whether the colorations set forth are for the ray floret upper or lower surface or both surfaces. Applicant should set forth in the specification color

designations for the ray floret upper and lower surfaces with reference to the employed color chart.

HH. Page 5, lines 25, 28, 29, 30, 31 and 32, Applicant states "petal". It appears --ray floret-- may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.

II. Page 5, lines 37, Applicant states "flowers". It appears --inflorescences-- may be more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

JJ. Page 5, line 33, Applicant states "ray flowers". It appears --ray florets-- may be more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

KK. Page 5, lines 28-32, Applicant should set forth in the specification additional information relative to the instant plant's ray florets including the typical and observed ray floret base and margin descriptors and the typical and observed texture.

LL. Page 5, lines 35 and 36, Applicant should set forth in the specification additional information relative to the instant plant's pedicels including coloration with reference to the employed color chart.

MM. Page 5, line 37, Applicant states "Number or flowers per flower cluster.- Abundant". This recitation is unclear as it is not understood what Applicant is intending. It appears Applicant may mean --Number of inflorescences per cluster-- or --Number of heads per inflorescence cluster--. Correction to the specification and/or clarification is necessary.

NN. Page 6, lines 2-12, Applicant should set forth in the specification additional information relative to the instant plants' bracts including bract margin descriptor and number of bracts per flower.

OO. Page 6, line 11, Applicant sets forth a bract color. However, it is uncertain whether the coloration set forth is for the bract upper or lower surface or both surfaces. Applicant should set forth in the specification color designations for the bract upper and lower surfaces with reference to the employed color chart.

PP. Page 6, lines 16 and 17, Applicant should set forth in the specification whether the instant plant produces pollen. If the instant plant produces pollen

then applicant should set forth the typical and observed amount of pollen produced, such as scarce, moderate or abundant, and its generic coloration. If no pollen is produced, Applicant should simply state in the specification that no pollen is produced.

QQ. Applicant should set forth in the specification additional information relative to the instant plant's flowers including number of flowers per lateral stem, number of flowers per plant, and typical and observed flowering season including the month.

RR. Applicants should set forth in the specification the time it takes to produce a flowering plant.

SS. Applicant should set forth in the specification information relative to the instant plants' flower buds including hardiness, diameter, length, form, surface, and color with reference to the observed color chart.

TT. Applicant should set forth in the specification the lastingness of an - individual bloom, on the plant.

UU. Page 8, line 10, Applicant states "flowers". It appears --inflorescences-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

VV. Page 8, line 11, Applicant states "petals". It appears --ray florets-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

WW. Page 8, line 12, Applicant states " disk color". It appears --disc floret color-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

XX. Applicant should set forth in the specification the location of the androecium and the gynoecium.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Claim Rejection

35 U.S.C. 112, 1<sup>st</sup> and 2<sup>nd</sup> Paragraphs

**Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.**

Comments

Due to the amount of revision seen necessary in this application, it is suggested that Applicant file a substitute specification, incorporating all additions, deletions and modifications so as to provide the printer a clean copy at the time of allowance. Applicant should specifically authorize cancellation of the present specification to the same. Further, a clean copy and marked up copy (showing any addition, deletion, and/or modification) of the substitute specification should be submitted. Applicant should note the new amendment format. (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/olla/preognitice/revamdtprac.htm>

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louanne C. Krawczewicz Myers whose telephone number is (571) 272-0979. The examiner can normally be reached on Monday and Thursday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent electronic business center whose telephone number is (866)-217-9197 (toll free) or (703) 305-3028 or (703) 308-6845 or email requests to [ebc@uspto.gov](mailto:ebc@uspto.gov).

**KENT BELL  
PRIMARY EXAMINER**

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